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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 23 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

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2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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PRABHAVATI B SOLANKI

Versus

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COMMISSIONER OF WEALTH TAX

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Appearance:

MR KN RAVAL for Petitioner  
MR MANISH R BHATT for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 16/12/98

ORAL JUDGEMENT (per R. Balia, J.)

The following two questions of law arising out of tribunal's order dated 11.6.1981 have been referred to

this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' at the instance of the assessee:-

- "1. Whether, on the facts and in the circumstances of the case, the tribunal was justified in holding that all the assessment orders for all the years under consideration were passed within the period of limitation?
2. Whether the tribunal was right in law in holding that the assessment orders passed by the W.T.O. were valid and were within the prescribed period of limitation even though there was no computation of tax liability in the assessment orders passed by the W.T.O."?

The reference relates to A.Y. 1971-72 to 1974-75 under the Wealth-tax Act.

2. Prior to 1.4.1975, Wealth-tax Act provided no limitation for completion of assessments under it. By insertion of sec. 17A by the Taxation Laws (Amendment) Act, 1975 with effect from 1.1.1976 for the first time period of limitation for completion of assessment was provided. For the period prior to 1.4.1975 the section as it originally was inserted provided that no order of assessment shall be made under sec. 16 at anytime after the expiration of a period of -

- (a) four years commencing on and from the 1st day of April, 1975 or one year from the date of the filing of a return or a revised return under sec. 15, whichever is later, where the assessment year is an assessment year commencing before that date.

For all the Assessment Year under consideration, which ended prior to 1.4.1975 the assessment orders were made on 31.3.1979. Notice of demand in pursuance of assessment orders were issued on 3/4 May 1979. The assessment order itself which forms part of the statement of case does not show computation of tax payable as per the assessment of net wealth. As the demand notices were issued after the expiry of 4 years after 1.4.1975, the assessee had raised an objection as to the validity of assessment orders before the Appellate Assistant Commissioner that the same are barred by time. The AAC had mentioned in passing that assessment orders were required to be completed by 31.3.1979 and demand notices which have been filed by the appellant along with the

appeal memos bears the date as 3-5-79/4-5-79 by which time the assessment had already become time barred.

3. The tribunal, while examining this issue, noticed that there are three stages under the scheme of the Act before the liability of the assessee is communicated to assessee,

- (i) computation of net wealth;
- (ii) computation of tax liability on the net wealth so computed, and
- (iii) the communication of the tax liability so computed.

It was further of the opinion that while first two stages are covered by limitation, the demand notice which is covered under the third stage is merely an intimation to the assessee of tax liability computed as a result of assessment order. It therefore did not agree with the AAC that the date of service of notices should also be within the period of limitation.

4. The question is no more res integra. It has been now settled by the Apex Court that the term assessment in the provision prescribing the period of limitation has been used in comprehensive sense which include integrated process of computation of net wealth as well as computation of tax liability thereon. The communication of tax liability is not part of the assessment. We may refer to Kalyankumar Ray v. CIT, 191 ITR 634 (SC) in this connection. A like question had arisen under the provisions of Income-tax Act and the court has answered the question by holding that

"assessment is one integrated process involving not only the assessment of the total income but also the determination of the tax. The latter is as crucial as the former.... That the Income-tax Officer has to determine , by an order in writing not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and the demand notice u/s 156 has to be issued in consequence of such an order."

The reason which weighed for reaching this conclusion was that sec. 143(3) of the Income-tax Act which deals with the assessment of income mandates that the ITO shall, by an order in writing, make assessment of the total income or loss of the assessee and determine the sum payable by him on the basis of such assessment. Like provision was

also contained in sec. 16 as it stood at the relevant period. Section 16(1) provides, "the Assessing Officer..... shall assess the net wealth of the assessee and determine the amount of wealth tax payable by him or the amounts refundable to him on the basis of such return."

5. Following this decision in Commissioner of Income-tax v. Purshottamdas T. Patel, 209 ITR 52, a Division Bench of this court opined that the two actions need not be simultaneous; it may be taken separately and at different time but the assessment is complete only when both the processes are over, namely, determination of net wealth and determination of tax payable on such net wealth. It is only when both the processes are complete that assessment can be said to be completed. As a result, one must reach the conclusion that both the processes must take place prior to the expiry of the period of limitation.

6. In Kalyankumar Ray's case (*supra*) the court had further observed,

"the statute does not however require that both the computations (i.e., of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is superscribed 'assessment order'. It does not prescribe any form for the purpose. Once the assessment of the total income is complete with indications of the deductions, rebates, reliefs and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time-consuming. If therefore the Income-tax Officer first draws up an order assessing the total income and, indicating the adjustments to be made, directs the office to compute the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the Income-tax Officer that the process described in section 143(3) will be complete."

7. This being the law, if we examine the facts of the present case, we find that the assessment orders determining net wealth on which tax is payable have been signed on 31.3.1979 which itself does not show computation of tax payable on the net wealth assessed.

Demand notice have been issued and served beyond the period of limitation. However, demand notice is not the order computing tax payable, it is an act subsequent to it. The determination of net taxable wealth has taken place on the last date before the expiry of period of limitation. If tax computation has taken place after 31.3.1979, obviously assessments in relation to Assessment Year ending before 1.4.1975 shall be barred by limitation. Neither the AAC nor the tribunal has enquired whether computation of tax has taken place on 31.3.1979 or thereafter. It is a question of fact when computation of tax payable has actually taken place. In the absence of necessary finding to that effect, it is not possible for us to answer the question whether the assessments in question were completed prior to 31.3.79 or were barred by limitation. It will therefore be for the tribunal, when it is required to pass a fresh order in the light of decision of this court on the questions of law referred to it to examine this question and reach its conclusion.

The reference accordingly stands disposed of. No order as to costs.

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